IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 337 of 2006

1. Ganesh Bank of Kurundwad Ltd.
   having its registered office at
   Kurundwad, Taluka Shirol,
   Dist. Kolhapur, Maharashtra

2. Ramesh Dattatray Gupte
3. Bapu Ramu Jong
4. Arvind Gangadhar Joshi
5. Vikas Vilas Patil
6. Mahesh Narayan Joshi .. Petitioners

V/s

1. Union of India
   through Joint Secretary,
   Ministry of Finance,
   Department of Economic Affairs
   (Banking Division), New Delhi.

2. The Reserve Bank of India
   Fort, Mumbai.

3. Chief General Manager In-charge
   RBI, Cuffe Parade, Mumbai.

4. Federal Bank Ltd.
   having its office at Aluva,
   State of Kerala.

5. Federal Bank Ltd.
   Mumbai Regional Office, Mumbai. .. Respondents

Mr.N.H. Seervai, Senior Advocate with Mr.G.S. Godbole for the Petitioners.

Mr.B.A. Desai, Additional Solicitor General with Mr.Y.R. Mishra for Respondent No.1.

Mr.Harish Salve, Senior Advocate with Dr.Virendra V. Tulzapurkar, Senior Advocate and Mr.Damle i/b M/s Udwadia & Udeshi for Respondents No.2 and 3.

Mr.Virag V. Tulzapurkar, Senior Advocate with Mr.Indranil Deshmukh i/b Amarchand & Mangaldas & Suresh A. Shroff & Co. for Respondents No.4 and 5.

WITH

WRIT PETITION (L) NO. 160 OF 2006

Sunil Mahadev Chavan .. Petitioner

V/s

1. Reserve Bank of India
2. Federal Bank Ltd.
3. Ganesh Bank of Kurundwar Ltd.
4. Union of India. .. Respondents

Mr.Vishwajeet Sawant for the Petitioner.

Mr.Harish Salve, Senior Advocate with Dr.Virendra V. Tulzapurkar, Senior Advocate and Mr.Damle i/b M/s Udwadia & Udeshi for Respondent No.1.

Mr.Virag V. Tulzapurkar, Senior Advocate with Mr.Indranil Deshmukh i/b Amarchand & Mangaldas & Suresh A. Shroff & Co. for Respondent No.2 .

Mr.N.H. Seervai, Senior Advocate with Mr.G.S. Godbole for Respondent No.3.

Mr.B.A. Desai, Additional Solicitor General with Mr.Y.R. Mishra for Respondent No.4.

CORAM : H.L. GOKHALE &
A.S. OKA, JJ.

DATE OF RESERVING THE JUDGMENT : 3RD/9TH MARCH 2006

DATE OF PRONOUNCING THE JUDGMENT: 5TH APRIL 2006

JUDGMENT : (Per H.L. Gokhale, J.)

1. The first of these two petitions is filed by a banking company regulated under the Banking Regulation Act, 1949 (hereinafter referred to as the

"petitioner-bank"). The second of these petitions is filed by an employee of the said bank. These two petitions seek to challenge the notification dated 7th January 2006 issued by the Government of India, Ministry of Finance imposing a moratorium in respect of the 1st Petitioner banking company for a period of 3 months from the date of order upto and inclusive 6th April 2006. Amongst others, it directs the said bank that it shall not without the permission in writing of the Reserve Bank of India grant any loan or advances or incur liability. The exception to this being withdrawal of sums not exceeding Rs.5,000/- by any savings bank or current account holder with a further relaxation to release an amount not exceeding Rs.10,000/- or the actual balance, whichever is less, in the event of certain difficulties such as medical treatment, higher education and obligatory expenses like marriage etc. The petitions seek to challenge the order dated 7th January 2006 issued by the Reserve Bank of India appointing two directors on the Board of Directors of the said bank. It further seeks to challenge the notification dated 9th January 2006 proposing a scheme of amalgamation of this bank into the Federal Bank, another private sector commercial bank, and then finally the order dated 24th January 2006 sanctioning the amalgamation of this bank with the Federal Bank. The Union of India, the Reserve Bank of India and the

Federal Bank are the contesting Respondents to these petitions.

2. The short facts leading to these petitions are this wise:

. Ganesh Bank of Kurundwad Ltd. was founded sometimes in the year 1920 and is having a banking license given by the Reserve Bank of India (RBI). It has some 32 branches situated principally in Districts of Kolhapur and Sangli of Maharashtra and the adjoining Belgaum District of Karnataka. It has around 1,75,000 depositors in the rural areas of these three districts.

3. The case of the Petitioner-bank is that it was carrying on its activities smoothly and that it incurred losses only once and that was in the financial year 2004-05. That was also for the reasons which were beyond its control, viz. (i) that the value of the government securities, wherein it had made deposits, went down, and (ii) the provisioning norms set up by the RBI were made more stringent by it. It was on this background that suddenly it was shocked to receive the order of moratorium in the morning of 8th January 2006. It led to unnecessary long queue at its branch at Dadar, Mumbai though there was no run on the bank any time in the past or even on that day as such. Thereafter the

issuance of the moratorium and the decision of the RBI to take further steps was duly advertised. The Reserve Bank of India thereafter appointed two directors of its own on the Board of Directors of the Petitioner-bank on 7th January 2006. The RBI then notified the proposed scheme of amalgamating the Petitioner bank with the Federal Bank on 9th January 2006. The Petitioner bank objected to it by filing its objections on 23rd January 2006, yet a decision was taken by the RBI and the Central Government on 24th January 2006 sanctioning amalgamation of the Petitioner Bank with the Federal Bank. These decisions are challenged in these petitions.

4. After the two petitions were filed, an interim order came to be passed on 27th January 2006 by this Court. The counsel for the Petitioners were heard and so also those for the Central Government, the RBI and the Federal Bank. This Court noted that whereas the moratorium was declared on 7th January 2006, within two days i.e. on 9th January 2006 the RBI proposed the name of Federal Bank to take over the Ganesh Bank. It was not known as to how any such scheme was drawn in such a short time. Similarly, when the Petitioner bank had made a representation on 23rd January 2006, the decision to amalgamate was arrived at on 24th January 2006. Prima facie, the Court felt that the steps taken were

not appropriate and were taken in hurry. The Court therefore granted an interim injunction in terms of prayer (a)(iii) and (b)(ii) of the first petition thereby the operation and implementation of the order dated 24th January 2006 was stayed and the status quo, which existed prior to 24th January 2006, was restored. This Court, however, clarified that the moratorium will continue to operate and the two directors appointed by the RBI were also continued to function as the directors of the Petitioner bank.

5. This order was challenged by the RBI and the Federal Bank in an SLP to the Apex Court. The Apex Court by its order dated 30th January 2006 directed this Court to hear and decide these petitions on a day to day basis. The interim order passed by this Court was however left undisturbed.

6. Accordingly, the Respondents have filed their affidavits in reply and the Petitioners have filed their rejoinders. The Petitioners have amended their petitions also and further affidavits are filed by all the parties. The Respondents have relied upon the Reports of various Committees appointed by the Central Government and the RBI concerning the banking sector. A number of authorities were cited by the counsel appearing for all the parties. Thus, the pleadings were

completed and thereafter the matter was heard from day to day from 14th February 2006 to 3rd March 2006. The parties sought time to file their written arguments which were filed by the Petitioners, the RBI and the Federal Bank by 9th March 2006. The matter is being decided thereafter.

7. The principal submissions of the Petitioners are two-fold, namely that the order dated 7th January 2006 imposing moratorium and then the order dated 9th January 2006 appointing two directors are both malafide to suit the convenience of Federal Bank, ultra vires the powers of the RBI and the Central Government and, therefore, bad in law, illegal and void. Similarly, the other submission of the Petitioners is that the subsequent framing of scheme of amalgamation on 9th January 2006 and the decision to sanction the amalgamation taken on 24th January 2006 are motivated and preplanned decisions for the benefit of the Federal Bank, malafide and ultra vires the powers of the Central Government and the RBI. It is further submitted that both these decisions are not justified on facts and are arrived at without taking into consideration the relevant material. As far as the first decision imposing the moratorium is concerned, it is submitted that there were no good reasons to impose the same and, as far as the decision to amalgamate is concerned, it is submitted that the said decision was

without considering the proposals of four other banks which were better placed.

8. As against these submissions of the Petitioners, the defence of the RBI and the Central Government is that the Petitioner bank was undoubtedly in serious financial difficulties and it is, therefore, that the moratorium had to be imposed. The moratorium was fully justified on the facts of the case. The decision to amalgamate the Petitioner bank with the Federal Bank was arrived at in full compliance with the statutory requirements and after considering all material on record as well as the suggestions and objections from the Petitioner Bank and all concerned, and after examining the proposals from the other four banks. It is, therefore, submitted that there is no reason to interfere with the decision arrived at by the RBI and the Central Government which is essentially for the benefit of the depositors. It is submitted that the interest of the employees is taken care of and the interest of the shareholders will obviously come last.

9. In view of what is narrated above, principally two points arise for determination in these petitions. They are:-

(A) Whether the decision dated 7th January 2006 of

the Central Government imposing moratorium and to appoint two directors was malafide, ultra vires the powers of the Central Government and the RBI, bad in law and void and unjustified on facts?

(B) Whether the notification dated 9th January 2006 containing the proposed scheme of amalgamation and the decision to sanction the amalgamation dated 24th January 2006 were malafide, ultra vires the powers of the Central Government and the RBI and unjustified on facts?

10. To decide these two points raised in these petitions, we will have to refer to various provisions of the Banking Regulation Act, 1949 under which the impugned orders are passed. From amongst these sections, however section 45 is the key section. It will therefore be appropriate to note the provisions of this section in extenso. This section reads as follows:-

45. Power of Reserve Bank to apply to Central Government for suspension of business by a banking company and to prepare scheme of reconstitution of amalgamation.-

(1) Notwithstanding anything contained in the foregoing provisions of this Part or in any other law or any agreement or other instrument, for the time being in force, where it appears to the Reserve Bank that there is good reason so to do, the Reserve Bank may apply to the Central Government for an order of moratorium in respect of a banking company.

(2) The Central Government, after considering the application made by the Reserve Bank under sub-section (1), may make an order of moratorium staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it thinks fit and proper and may from time to time extend the period so however that the total period of moratorium shall not exceed six months.

(3) Except as otherwise provided by any directions given by the Central Government in the order made by it under sub-section (2) or at any time thereafter the banking company shall not during the period of moratorium make any payment to any depositors or discharge any

liabilities or obligations to any other creditors.

(4) During the period of moratorium, if the Reserve Bank is satisfied that-

(a) in the public interest; or

(b) in the interests of the depositors; or

(c) in order to secure the proper management of the banking company; or

(d) in the interests of the banking system of the country as a whole,

it is necessary so to do, the Reserve Bank may prepare a scheme-

(i) for the reconstruction of the banking company, or

(ii) for the amalgamation of the banking company with any other banking institution (in this section referred to as "the transferee bank").

(5) The scheme aforesaid may contain provisions for all or any of the following matters, namely:-

(a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, the liabilities, duties and obligations of the banking company on its reconstruction or as the case may be, of the transferee bank;

(b) in the case of amalgamation of the banking company, the transfer to the transferee bank of the business, properties, assets and liabilities of the banking company on such terms and conditions as may be specified in the scheme;

(c) any change in the Board of directors, or the appointment of a new Board of directors, of the banking company on its reconstruction or, as the case may be, of the transferee bank and the authority of whom, the manner in which, and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of directors or of

any director the period for which such appointment shall be made;

(d) the alteration of the memorandum and articles of association of the banking company on its reconstruction or, as the case may be, of the transferee bank for the purpose of altering the capital thereof or for such other purposes as may be necessary to give effect to the reconstruction or amalgamation;

(e) subject to the provisions of the scheme, the continuation by or against the banking company on its reconstruction or, as the case may be, the transferee bank, of any actions or proceedings pending against the banking company immediately before the date of the order of moratorium;

(f) the reduction of the interest or rights which the members, depositors and other creditors have in or against the banking company before its reconstruction or amalgamation to such extent as the Reserve Bank considers necessary in the public interest or in the interest of the members, depositors and other creditors or for the

maintenance of the business of the banking company;

(g) the payment in cash or otherwise to depositors and other creditors in full satisfaction of their claim-

(i) in respect of their interest or rights in or against the banking company before its reconstruction or amalgamation; or

(ii) where their interest or rights aforesaid in or against the banking company has or have been reduced under clause (f), in respect of such interest or rights as so reduced.

(h) the allotment to the members of the banking company for shares held by them therein before its reconstruction or amalgamation whether their interest in such shares has been reduced under clause (f) or not, of shares in the banking company on its reconstruction or, as the case may be, in the transferee bank and where any members claim payment in cash and not allotment of shares, or where it is not possible to allot shares to

any members, the payment in cash to those members in full satisfaction of their claim-

(i) in respect of their interest in shares in the banking company before its reconstruction or amalgamation; or

(ii) where such interest has been reduced under clause (f) in respect of their interest in shares as so reduced;

(i) the continuance of the services of all the employees of the banking company (excepting such of them as not being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), are specifically mentioned in the scheme) in the banking company itself on its reconstruction or, as the case may be, in the transferee bank at the same remuneration and on the same terms and conditions of service, which they were getting, or as the case may be, by which they were being governed, immediately before the date of the order of moratorium:

Provided that the scheme shall contain a provision that-

(i) the banking company shall pay or grant not later than the expiry of the period of three years from the date on which the scheme is sanctioned by the Central Government, to the said employees the same remuneration and the same terms and conditions of service as are, at the time of such payment or grant, applicable to employees of corresponding rank or status of a comparable banking company to be determined for this purpose by the Reserve Bank (whose determination in this respect shall be final);

(ii) the transferee bank shall pay or grant not later than the expiry of the aforesaid period of three years, to the said employees the same remuneration and the same terms and conditions of service as are, at the time of such payment or grant, applicable to the other employees corresponding rank or status of the transferee bank subject to the qualifications and experience of the said employees being the same as or equivalent to those of such other employees of the transferee bank;

. Provided further that if in any case under clause (ii) of the first proviso any doubt or difference as to whether the qualification and experience of any of the said employees are the same as or equivalent to the qualifications and experience of the other employees of corresponding rank or status of the transferee bank the doubt or difference shall be referred, before the expiry of a period of three years from the date of the payment or grant mentioned in that clause, to the Reserve Bank whose decision thereon shall be final;

(j) notwithstanding anything contained in clause (i) where any of the employees of the banking company not being workmen within the meaning of the Industrial Disputes Act, 1947 (14 if 1947), are specifically mentioned in the scheme under clause (i) or where any employees of the banking company have by notice in writing given to the banking company, or, as the case may be, the transferee bank at any time before the expiry of the one month next following the date on which the scheme is sanctioned by the Central

Government, intimated their intention of not becoming employees of the banking company on its reconstruction or, as the case may be, of the transferee bank, the payment to such employees of compensation, if any, to which they are entitled under the Industrial Disputes Act, 1947, any such pension, gratuity, provident fund and other retirement benefits ordinarily admissible to them under the rules or authorisations of the banking company immediately before the date of the order of moratorium;

(k) any other terms and conditions for the reconstruction or amalgamation of the banking company;

(l) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

6(a) A copy of the scheme prepared by the Reserve Bank shall be sent in draft to the banking company and also to the transferee bank and any other banking company concerned in the amalgamation, for the suggestions and objections,

if any , within such period as the Reserve Bank may specify for this purpose.

(b) The Reserve Bank may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the banking company and also from the transferee bank, and any other banking company concerned in the amalgamation and from any members, depositors or other creditors of each of those companies and the transferee bank.

(7) The scheme shall thereafter be placed before the Central Government for its sanction and the Central Government may sanction the scheme without any modifications or with such modifications as it may consider necessary, and the scheme as sanctioned by the Central Government shall come into force on such date as the Central Government may specify in this behalf;

. Provided that different dates may be specified for different provisions of the scheme.

(7A). The sanction accorded by the Central Government under sub-section (7), whether before or

after the commencement of section 21 of the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963) shall be conclusive evidence that all that requirements of this section relating to reconstruction, or, as the case may be, amalgamation have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Central Government to be a true copy thereof, shall, in all legal proceedings (whether in appeal or otherwise and whether instituted before or after the commencement of the said section 21), be admitted as evidence to the same extent as the original scheme.)

(8) On and from the date of the coming into operation of the scheme or any provision thereof, the scheme or such provision shall be binding on the banking company, or, as the case may be, on the transferee bank and any other banking company concerned in the amalgamation and also on all the members, depositors and other creditors and employees of each of those companies and of the transferee bank, and on any other person having any right or liability in relation to any of those companies or the transferee bank including the trustees or other persons managing, or connected in any other manner with, any provident fund or other

fund maintained by any of those companies or the transferee bank.

(9) (On and from the date of coming into operation or, or as the case may be, the date specified in this behalf in, the scheme), the properties and assets of the banking company shall, by virtue of and to the extent provided in the scheme, stand transferred to, and vest in, and the liabilities of the banking company shall, by virtue of and to the extent provided in the scheme, stand transferred to, and become the liabilities of the transferee bank.

(10) If any difficulty arises in giving effect to the provisions of the scheme, the Central Government may by order do anything not inconsistent with such provisions which appears to it necessary or expedient for the purpose of removing the difficulty.

(11) Copies of the scheme or of any order made under sub-section (10) shall be laid before both Houses of Parliament, as soon as may be, after the scheme has been sanctioned by the Central Government, or, as the case may be, the order has been made.

(12) Where the scheme is a scheme for amalgamation of the banking company, any business acquired by the transferee bank under the scheme or under any provision thereof shall, after the coming into operation of the scheme or such provision, be carried on by the transferee bank in accordance with the law governing the transferee bank, from the operation of any provisions thereof as the Central Government on the recommendation of the Reserve Bank may, by notification in the Official Gazette, make for the purpose of giving full effect to the scheme;

. Provided that no such modification or exemption shall be made so as to have effect for a period of more than seven years from the date of the acquisition of such business.

(13) Nothing in this section shall be deemed to prevent the amalgamation with a banking institution by a single scheme of several banking companies in respect of each of which an order of moratorium has been made under this section.

(14) The provisions of this section and of any scheme made under it shall have effect

notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law or any agreement, award or other instrument for the time being in force.

(15) In this section, "banking institution" means any banking company and includes the State Bank of India or a subsidiary bank or a corresponding new bank.

[Explanation. - References in this section of the terms and conditions of service as applicable to an employee shall not be construed as extending to the rank and status of such employee.]"

11. When we look to the first point for determination, we will have to examine as to whether there were "good reasons" for the RBI to apply to the Central Government for this moratorium which led to the impugned order dated 24th January 2006. We will also have to examine as to what is this concept of good reasons contemplated under this section and as to how the RBI justifies its decision on the basis of the yardstick applied by it. As far as the Petitioner bank is concerned, its case is that it is a small commercial bank and the only year in which it had made losses was for the financial year 2004-05. That was because of

the value of the government securities going down and the provisioning norms being made more stringent by the RBI. According to the RBI's application to the Central Government, the networth of the Petitioner bank had become negative and so also the Capital to Risks weighed Asset Ratio (CRAR) had become negative and which was at -5.83.

12. As against this defence of the RBI, it was pointed out on behalf of the Petitioners that Annexure-1 to RBI's application under section 45(1) dated 4th January 2006 contained the key financials of the Petitioner bank. Clause 8 thereof dealt with the non-performing assets. It was pointed out on behalf of the Petitioners that the net NPAs had gone down from 10.59% to 8.32%. It was also pointed out that the Petitioner bank had done good resource mobilisation in the meanwhile and its paid-up capital had gone up from Rs.1.52 crore to Rs.1.82 crore. As against this, it was pointed out on behalf of the RBI that their application dated 4th January 2005 for imposing moratorium pointed out the following difficulties faced by the bank in paras 2, 3 and 4 thereof. These three paras read as follows:-

> "2. The key financials of the bank are in Annex 1. It may be seen from it that the bank

has not only been stagnating but has been incurring serious losses. A stage has reached when the networth of the bank has turned negative warranting immediate action. As described, all efforts to persuade the current owners to improve the situation have failed. Hence this application for imposing moratorium under sub-section (1) of Section 45 of the Banking Regulation Act, 1949 in respect of The Ganesh Bank of Kurundwad Ltd. is being made.

3. The events leading to the current situation are described in the Annex 2.

4. Since the bank’s networth has turned negative to (-) 3.05 crore, thereby turning the CRAR also negative at (-) 5.83% as on March 31, 2005, shareholders equity has been fully eroded. The bank did not have adequate assets to meet its outside liabilities as required under Section 22(3)(a) of the Banking Regulation, 1949. The bank also did not maintain "real or exchangeable value" of the capital in order to comply with the provisions of Section 11(3)(i) of the Banking Regulation Act, 1949. In the absence of any interest shown by the major shareholders in raising

> capital or making any other alternate arrangement for infusion of capital, publication of the bank's audited balance sheet for 2005-06 indicating accumulated losses and erosion of networth would lead to serious loss of public confidence."

In para 5 of this letter, the RBI wrote to the Additional Secretary, Ministry of Finance that infusing fresh capital did not appear to be feasible. There was reluctance on the part of the shareholders and directors to merge with the stronger bank. It was therefore imperative to make immediate arrangement to protect the interest of the depositors to merge with another bank. It is for this purpose that the moratorium was proposed under section 45(1) under para 6 of this application.

13. (i) In the affidavit in reply filed before this Court, it was averred by Mr.Rajan, Deputy General Manager of RBI in para 8(j) that in June 1998, the Chairman of the Petitioner Bank was advised that old private sector banks having present networth of Rs.5 lakhs should attain the level of Rs.50 crores within a period of 3 years. On 12th January 1999, the petitioner-bank sent the plan to augment it to Rs.20.08 crores over the period of 5 years. At the end of 31st

March 2002, its networth stood at only Rs.6.62 crores and its paid-up capital at the end of March 2005 was Rs.1.82 crore. It was further stated in para 8(l) of this affidavit that as per the bank's balance sheet as on 31st March 2005, it had reported the net loss of Rs.5.97 crores. In para 8(m), it was stated that in view of the deteriorating financial position, further meetings were held on 12th August 2005, 26th August 2005 and 12th September 2005 to point out the major concerns of RBI viz. low paid-up capital of Rs.1.82 crore, high level of gross NPAs (18.04%) and net loss of Rs.5.97 crores. On 14th October 2005, the bank was asked to submit a detailed plan for capital augmentation. It is on this background that the moratorium was imposed on 7th January 2006.

(ii) The Petitioners filed the rejoinder of one Mahesh Narayan Joshi. In reply to para 8(j) of the affidavit in reply, he stated that considering the fact that deposits with the Petitioner bank were Rs.92 crores, it was irrational to insist that it should have capital funds of Rs.50 crores. It was however pointed out that the bank has consistently increased its capital and it stood at Rs.2.95 crores by 5th January 2006 which included Rs.1.13 crore in the form of share application money. According to him, it was the share capital. Again, as far as NPAs are concerned, he pointed out

that they had gone down from 14.10% to 10.9% and, as far as loss of Rs.5.97 crores is concerned, it is because of the change in the provisioning norms.

14. Having seen the averments in the reply and in the rejoinder, the fact remains that the averments in para 8(m) of the reply were not controverted as such, namely that the bank had paid-up capital of Rs.1.82 crores only, high gross NPAs at 18.04% and net loss of Rs.5.97 crores. It was in these circumstances that the RBI had to decide as to whether the depositors of the bank required any protection. From what is stated in the reply, it is seen that the RBI has been monitoring the financial position of the Petitioner Bank since June 1998 and since December 2003 the bank had been placed under monthly monitoring as provided under section 27 of the Act. When one talks about "good reasons" under section 45(1), they can be only the interest of the depositors and the interest of the bank. This is because the primary objective of this Act is protection of the interest of depositors as against the primary objective of the Company Law which is to safeguard the interest of shareholders. This is what is specifically stated in the objects and reasons of the Banking Regulation Act. On these facts, the RBI was of the view that an appropriate action was necessary. It could not be said that the decision was

taken in the absence of good reasons. It is difficult to say that it was taken for the benefit of the Federal Bank since these reasons go back to December 2003 when Federal Bank was not in picture.

15. Mr.Seervai, learned Counsel appearing for the petitioner-bank, criticised the expectation of the RBI that a small bank like the Petitioner ought to have the **Capital Adequacy** of Rs.50 crores as advised in June 1998 and which was later on revised to Rs.300 crores by circular dated 20th February 2004. He drew our attention to section 11(3)(i) of the Act which provides that if a banking company has places of its business in more than one State, it is required to have the aggregate value of its paid-up capital and reserves at not less than Rs.5 lakhs. If that is the expectation, the RBI cannot insist on the requirement of Rs.50 crores and then go on increasing it further. He relied upon para 10 of the judgment of the Apex Court in **Assam Co. Ltd. v. State of Assam - (2001) 4 SCC 202**, which lays down that a delegate cannot over-ride the Act either by exceeding the authority or by making provision which is inconsistent with the Act. Mr.Salve, learned Counsel appearing for the RBI, on the other hand, pointed out that the language of Section 11(3)(i) is that in the case of such a banking company, the aggregate value of its paid-up capital and reserves

shall not be less than Rs.5 lakhs. In his submission, therefore, insistence of Rs.50 crores or a higher amount cannot be said to be erroneous. He submitted that with globalisation, finance and banking in rural areas also have to improve and it is from that point of view that the RBI had expected the above referred enhancement. That was expected from all similarly situated banks and not merely from the Petitioner alone. He referred to the expectations under the **Basle Committee on Banking Supervision, 1988** and the first Narasimham Committee Report on Financial System, 1991 which recommended on the basis of the Basle Committee that India also must conform to the international standards of capital adequacy in a phased manner. He drew our attention to the second Narsimham Committee Report on Banking Sector Reforms of 1998 which led the RBI to issue guidelines to revise the minimum paid-up capital for the private sector banks.

16. We quite see the concern of RBI to improve the banking sector even in rural areas. The submission of Mr.Salve was that larger the turnover, there are more economies of such large enterprise and there are better services. The profit margin goes down in terms of percentage, yet it goes up in terms of actual earning, while at the same time giving greater benefits to the customers. Having noted this concern of RBI, we have

our doubts as to whether any such enhancement can be expected by an executive order. When the section speaks of not less than Rs.5 lakhs, it is difficult to say that such banks ought to have arranged a capital of Rs.50 crores and now Rs.300 crores. This is a small private commercial bank in rural sector and it is entitled to function in its own way. The performance of the Petitioner bank cannot be judged, therefore, on such a higher yardstick.

17. (i) At the same time, the fact remains that when the paid-up capital of the bank is so low, namely Rs.1.82 crore, its gross NPAs are at higher level (8.04%), its networth had turned negative and the net loss is Rs.5.97 crores, there was nothing wrong on the part of the RBI to expect an appropriate plan of capital augmentation. The bank has not been able to do that and it was quite likely that it would land into difficulties.

(ii) Mr.Seervai submits that when one talks about moratorium under section 45(1), the good reasons will have to be related only to a run on the bank or existence of court proceedings and actions because they are sought to be stayed under sub-section (2) of section 45 of the Act. In the present case, there were no such proceedings and, therefore, the action as

directed could not be resorted.

(iii) Mr.Salve, on the other hand, submits that while examining this concept of "good reasons", the objects of the Act will have to be kept in mind as also the five grounds of satisfaction leading to reconstruction or amalgamation mentioned in section 45(4).

(iv) In our view, court actions are only one factor to be considered for imposing the moratorium. The phrase "good reasons" in sub-section (1) is a wider term and it will not be correct to restrict it only to the actions mentioned under sub-section (2). Section 45 of the Act is concerned with preparing a scheme of reconstruction or amalgamation which would become necessary where the RBI is satisfied about the existence of either of the four grounds mentioned in section 45(4). Apart from public interest and the interest of the banking system, which are provided in sub-clause (a) and (d) thereof, section 45(4) provides for the necessary action in the interest of the depositors or with a view to secure proper management of the bank which are grounds (b) and (c) in that sub-section. Precursor to the framing of the scheme is the imposition of the moratorium which is provided in sub-section 45(1) and (2). Existence of court proceedings, mentioned in section 45(2), would

certainly be one of the good reasons to impose moratorium, but that certainly cannot be the only one. Considering that object of the Act is protection of the interest of the depositors, such an interpretation of the concept of "good reasons" will have to be adopted, and not a narrow one.

18. (i) It was submitted by Mr.Seervai that there was no run on the bank in the instant case. In para 8(o) of the affidavit of Mr.Rajan, it is pointed out that when moratorium was imposed, there were long queues at four branches of the Petitioner Bank on 8th January 2006. The RBI arranged to send an amount of Rs.2 crores to the Petitioner Bank from its current account to meet the depositors' demands. The manager of the Petitioner Bank's branch at Dadar has made an affidavit to state that he had not asked for an amount of Rs.2 crores and yet it was sent by RBI. The branch manager has further stated that depositors were unhappy with the decision of RBI. These are all disputed questions. As far as the views of the depositors are concerned, they are bound to vary from person to person and we cannot draw any conclusion merely on the bank manager's affidavit that people were angry against RBI. Besides, the depositors have not filed any petition nor any supporting affidavit for that matter. It can be said that the action of the RBI is a pre-emptive action

which it took considering the then financial position of the Petitioner Bank and to prevent further difficulties which were likely. It is not that when there is a run on the bank then only RBI must intervene or that it must intervene only when there are good number of court proceedings against the concerned bank. The RBI has to take into account the totality of the circumstances and has to form its opinion accordingly.

(ii) The question is whether the inference drawn by the RBI is a possible inference or is something which can be said to be a perverse one. In our view, this is a situation where two views are possible and if the regulating body arrives at a conclusion on the basis of the facts and figures before it and points out that it has been warning the Petitioner Bank for last over 3 years, it will not be proper for us to substitute our judgment for that of RBI. In the circumstances, we cannot hold that the decision of RBI to impose the moratorium was unjustified or against the provisions of section 45(1) or such that one can call it a perverse one and interfere with it. The RBI is an expert body to regulate the banking activities. Its judgment based on the facts before it cannot be substituted by us, merely because we may perhaps take another view of the matter. The moratorium has been challenged on the ground of malafides also. We will consider this

challenge along with the challenge to amalgamation also on the basis of malafides.

19. As far as the challenge to the appointment of two directors on the Board of Directors of the Petitioner Bank is concerned, the RBI does have the necessary power under section 36AB of the Act. In the circumstances, it cannot be faulted for appointing the two directors. We cannot therefore interfere into the impugned decision appointing the directors for any such reason. We make it clear that we decline to interfere with the decision imposing moratorium principally in view of the facts and circumstances of the case as narrated above and not because of failure of the Petitioner bank to meet the higher norms as set up by the RBI.

20. Then we come to the second question as to whether the decision of RBI to recommend a scheme for amalgamation on 9th January 2006 and the decision of the Government to sanction the amalgamation on 24th January 2006 could be said to be mala fide, bad in law. As far as this question is concerned, it contains many sub-questions which are as follows:-

(i). The first one is non-consideration of any scheme for reconstruction before going for

amalgamation.

(ii). The second is with respect to proposing amalgamation with Federal Bank on 9th January 2006 itself.

(iii). The third facet is not considering the proposal of four other banks.

(iv). The fourth is with respect to an adequate opportunity under Section 45(6) and (7) of the Act.

21. Now, as far as the first two questions of non-consideration of reconstruction and proposing merger with Federal Bank, we have noted that the petitioner-bank was in difficulties from 1990 and particularly from December 2003 when it was placed under monthly monitoring. RBI in its application for moratorium to the Central Government dated 4th January 2006 had clearly stated in para-5 that during the discussion with the petitioner-Bank, major shareholders and directors had shown the total reluctance to merge into the stronger bank. In view thereof, it was imperative that immediate arrangement to protect the interest of the depositors should be made through its merger with a bank under Section 45 of the Act. RBI had, therefore, made an effort and called upon the

petitioner-bank that if possible, to explore the possibility of merger with another stronger bank. It had also made an effort to impress that there should be infusion of fresh capital. That was not coming. There could be a reconstruction by bringing in more money or by narrowing the size of the petitioner-bank which did not appear to be feasible. The only option left was that of amalgamation.

22. Mr.Salve, learned Counsel appearing for RBI, pointed out that when a moratorium is imposed, RBI was duty bound to prepare a scheme either of reconstruction or of amalgamation under Section 45(4) with any other banking institution. Thus, RBI had to give a scheme. Federal Bank had responded immediately and unconditionally. It has been pointed out that the fact that the petitioner-bank was put under moratorium was advertised on web site on 7th January 2006 itself. It is at that stage that Federal Bank promptly gave its proposal on 8th January 2006. The Federal Bank gave three reasons in its letter to RBI which were as follows:-

> " i). Ganesh Bank of Kurundwad Ltd. has 32 branches situated in Western Maharashtra and Belgaum area of Karanataka. Our presence in this area is very minimal and adding up of the

branches of Ganesh Bank of Kurundwad Ltd. will enable us to have significant presence in the area.

ii). Ganesh Bank of Kurundwad Ltd. has mot of the branches in the agricultural heartland which would enable us to augment our credit disbursal to agricultural sector.

iii). Small size of Ganesh Bank of Kurundwad Ltd. ensures that there will not be any difficulty in the merger process between our bank and them. "

Thereafter it stated as follows:-

" We also inform our unconditional acceptance to make full payment to depositors and that we will not demand any regulatory forbearance."

Thus, the Federal Bank was ready to honour full liabilities of the depositors and did not ask for any concessions. Therefore, on the basis of a standard scheme, the opinion of the petitioner-bank was sought on 9th January 2006 with respect to merger in Federal Bank. Mr.Salve, in fact, referred to the scheme as a "cut and paste scheme" and defended action of RBI as a

regulator in the interest of the depositors.

23. Mr.Seervai, learned Counsel appearing for the petitioner-bank, on the other hand, submitted that Section 45(4) talks about the RBI preparing a scheme of reconstruction or amalgamation if it was satisfied "during the period of moratorium" that such a scheme had to be prepared (a) in the public interest or (b) in the interest of depositors or (c) to secure proper management of the bank or (d) in the interest of the banking institution. He, therefore, submitted that whereas the moratorium was imposed on 7th January 2006, on 9th January 2006 itself RBI had come out with a proposal on the basis of this letter of Federal Bank of 8th January 2006. In his submission, it clearly shows a planning amongst all concerned. He submitted that if moratorium was a step towards amalgamation, it may happen in a given case that though moratorium may be imposed, yet no other bank may not come forward to take over. Accordingly to him, the interpretation which was sought to be placed by RBI clearly indicated that there was a prior understanding with Federal Bank. Besides, the Federal Bank had announced on 8th January 2006 itself on Television that it was intending to take over Ganesh Bank. He also pointed out the manner in which various actions were taken by officers of RBI including the manner in which the approval of the Governor of RBI

was obtained on 9th January 2006 though he was abroad and the statement in para 4(v) in the affidavit dated 14th February 2006 of Ms.Sudha Damodar, General Manager of RBI to the following effect:-

> " On 9th January 2006 the respondent No.1 considered the said application and taking into consideration the unconditional offer made by respondent No.4 took its decision to amalgamate the petitioner-bank with respondent No.4."

Mr.Seervai, therefore, submitted that inviting the objections and suggestions thereafter was nothing but a farce and RBI had made up its mind one way or the other. If moratorium was merely a step towards amalgamation, it clearly indicates that it was resorted to for the benefit of the Federal Bank.

24. On the other hand, Mr.Salve submitted that the aforesaid statement in affidavit only means that RBI had decided to consider the application of Federal Bank for amalgamation with the petitioner-bank. Its decision will have to be read as a decision to incorporate the name of Federal Bank in the proposed scheme under Section 45(4). It cannot mean anything other than that. RBI had already stated in its proposal for moratorium that bringing in more capital

or reconstruction appeared to be difficult. That being so, it was left with no option but amalgamation. Having faced with these facts, it decided to consider the application of Federal Bank to the scheme of amalgamation. The statement on affidavit will have to be read as such. Mr.Salve placed all the official notings regarding Governor's approval before us and submitted that RBI did not want to hide anything. Mr.Virag Tulzapurkar appearing for Federal Bank explained as to how it had moved promptly to give its proposal. He submitted that Federal Bank was not in a position to influence the decision of RBI or that of the Central Government. It had its own reservations about some of the clauses of the standard scheme and had submitted the same, but they were not accepted.

25. Mr.Seervai referred to the definition of "reconstruction" in Iyer's Advanced Law Lexicon to mean to construct again, to rebuild, to form again or renew. He submitted that one meaning of reconstruction is re-organising the capital or the rights of the shareholders or creditors etc. as under section 394 of the Companies Act. In our view, reconstruction certainly means strengthening the bank concerned. However, in the instant case, in view of the facts narrated earlier, and failure of the Petitioner-bank to augment its financial position, strengthening of the

bank appeared to be clearly difficult if not impossible. In the circumstances, RBI had formed a value judgment as to what recourse it should take. We cannot fault with its decision not to go for reconstruction but to consider a scheme of amalgamation with Federal Bank.

26. Mr.Seervai's third objection was that the claims of other banks were not considered. It has clearly been placed on record that one of those four banks is Ratnakar Bank which is another commercial bank. It was already in financial difficulty. Two foreign banks had given their proposals viz. the City Bank and Standard Chartered Bank. It is seen from their letters that both of them wanted to have due diligence and wanted to move on the basis of the road map for presence of foreign banks. As far as this aspect is concerned, the RBI has clearly placed it on record that as per the various Committee reports and the road map, as of now the rural sector is not open to the foreign banks. Besides, City Bank had clearly stated in its letter that it wanted relief from the incremental rural branches and the incremental agricultural lending for a period of three years. Surely, RBI could not accept it since it would have been contrary to the purpose of amalgamation viz. to support the depositors in the rural area.

27. The only other bank which remained to be considered was Saraswat Co-operative Bank. This bank also sought due diligence though it had given offer of Rs.350/- per share to the shareholders of the bank. Besides, any decision in that behalf would result into substantial delay. Saraswat Bank's letter dated 10th January 2006 refers to the proposal for merger of Maratha Mandir Co-operative Bank with Saraswat Co-operative Bank which had been cleared by the RBI. It had to obtain the clearance from the Central Registrar of Co-operatives and also the Registrar of Co-operative Societies, Maharashtra, which was apart from the clearance of RBI. This would certainly mean that a lot of time will be taken in the procedure which may go beyond six months.

28. This was apart from the question of legality of any such merger of a commercial bank in a cooperative bank. Mr.Salve has submitted that a merger between a banking company and cooperative bank was not possible. Section 56 of the Act has made this Act applicable to cooperative societies subject to the modifications therein. While sub-clause (a)(i) of this section makes a reference to a banking company to be construed as a reference to a cooperative bank, only those provisions of this Act would apply to a

cooperative bank which are made applicable by section 56. In his submission, sub-section (zb) of this section is crucial inasmuch as it specifies that sub-sections 4 to 15 of section 45 do not apply to the cooperative banks whether transferor or transferee. Therefore, section 45(4), which empowers the RBI to prepare a scheme of amalgamation, does not apply to cooperative societies. Mr.Seervai, on the other hand, submitted that section 56 provides that the Act applies to cooperative societies unless the context otherwise requires. It further provides that reference to a banking company will be construed as a reference to a cooperative bank. Therefore, in his submission, a cooperative bank would be covered under section 45(15) of the Act. The interpretation placed by Mr.Seervai, however, does not explain the provision of sub-section (zb) which specifically omits sub-sections other than (1), (2) and (3) of section 45 from their application to cooperative societies. It is therefore difficult to see as to how the Petitioner bank could merge into a cooperative bank. In any case, at the level of the officers of RBI, they had an option, namely the proposal of a banking company to take over the liability of the Petitioner bank. In this scenario, if they opted for the same in the interest of the depositors to avoid any further controversy, they cannot be faulted.

29. The last submission of Mr.Seervai is with respect to not providing adequate opportunity to the Petitioner bank before the decision of amalgamation was taken. He emphasises the provisions of sub-sections (6) and (7) of section 45 which provide for considering the suggestions and objections of the concerned bank, the transferee bank and other banking company concerned in the amalgamation and from the members, depositors and creditors of each of those companies and transferee bank being considered. He submits that the Petitioner bank had given its objection on 23rd January 2006 and on 24th January 2006, the Central Government has given its sanction. Apart from being a hasty decision, it cannot be said to be a decision in consonance with the principles of natural justice.

30. Mr.Desai, Additional Solicitor General, on the other hand, pointed out that the RBI is an expert body. It had forwarded the objections and suggestions and its comments separately under five different annexures, viz. objections and suggestions received from the depositors (Annexure-1), those received from the shareholders (Annexure-2), those received from the transferor bank (Annexure-3), those received from the transferee bank (Annexure-4) and those received from others (Annexure-5). He submitted that the RBI had

recommended acceptance of the scheme in terms of sub-section 7 of section 45 without any modification or with such modifications as may be considered necessary. The government having accepted this advise, which is an expert advise, has sanctioned the scheme promptly and without any delay, which action was in the interest of the depositors. As far as the decision having been arrived at promptly, he relied upon the observations in para 79 of the judgment of the Apex Court in **Narendra Kumar Maheshwari v. Union of India - 1990 (Supp) SCC 440** to the effect that speed is good but haste is bad and it is also desirable to bear in mind that one should hasten slowly. However, whether in a particular case, there has been haste or speed depends upon the objective situation or on overall appraisement of the situation. He then relied upon the dicta in the case of **Chairman & M.D., BPL Ltd. v. S.P. Gururaja - (2003) 8 SCC 567**, where in para 34 the Apex Court observed that undue haste also is a matter which by itself would not have been a ground for exercise of powers of judiciary unless it is held to be malafide. This was in answer to Mr.Seervai referring to the judgment in the case of **S.P. Kapoor v. State of H.P. - (1981) 4 SCC 716** to the effect that haste makes a decision suspicious.

31. Section 45(6) and (7) provide for an

opportunity to give suggestions and objections to different affected parties, viz. (i) the banking company, (ii) the transferee bank, (iii) any other company concerning amalgamation, and (iv) members, depositors or other creditors of each of those companies and the transferee bank. Mr.Salve submitted that the phrase "any other banking company concerned in the amalgamation" will have to be restricted to a subsidiary bank and not to any of these banks which had given their proposal. Even if we accept this interpretation, it would mean quite a large group of affected interests, namely the transferor bank, the transferee bank, such other subsidiary bank and then members, depositors or other creditors of each of these companies and the transferee bank. If we read anything more than what is specifically provided in these sub-sections, namely a personal hearing, it may become difficult to complete the process of amalgamation within the period of 6 months for which the moratorium under section 45(1) is to operate. The object of section 45 is to provide a relief to the depositors at the earliest where any such banking company lands into difficulty and is required to be either reconstructed or amalgamataed with other banking institution. Surely, the decision is required to be taken at the earliest. This is because the moratorium will be running in the meanwhile. Giving of a personal hearing

to all such affected interests would delay the decision. What is contemplated is that their suggestions and objections must be shown due regard. That can be obtained by receiving such suggestions and objections and RBI giving its comments thereon. In our view, that is sufficient by way of compliance with principles of natural justice. That is also the view taken by a Full Bench of the Punjab and Haryana High Court in the case of **Punjab Cooperative Bank v. Union of India - AIR 2001 Punjab & Haryana 1**, where in para 42 it is observed as follows:

> "The process as contemplated under section 45 has to be computed within a period of 6 months. The grant of a right of oral hearing in every case may enable the concerned party to unduly obstruct and delay the proceedings with the result that the process of law may defeat the very purpose of it."

32. Mr.Seervai had sought to make a case of factual malafides on the basis of the manner in which the Federal Bank promptly gave its proposal on 8th January 2006 and next day declared on television its intention to take over the Petitioner-bank. This was when the Petitioner-bank was not in the full know of the things which were taking place. He criticised the

manner in which the oral approval of the Governor was taken on 9th January 2006 to propose the scheme when he was abroad. He criticised the affidavit of Ms. Sudha Damodar where she stated that on 9th January 2006 itself RBI had decided to amalgamate with Federal Bank. We have noted the submissions of the Respondents earlier. Mr.Tulzapurkar has explained the reasons as to how and why Federal Bank had moved promptly and Mr.Salve has placed the notings of RBI before us. He has also explained the statement appearing in the affidavit of Ms.Sudha Damodar. Mr.Seervai as well criticised the fact that whereas the objections were given on 23rd January 2006, on 24th January 2006 itself RBI forwarded its comments to recommend amalgamation. This has been answered by Mr.Salve by pointing out that the financial position of the Petitioner-bank was precarious for quite a few years prior to the impugned decisions. The Petitioner-bank did not take the steps which it ought to have taken. Reconstruction seemed almost impossible. In the circumstances, it was desirable to accept amalgamation which was inevitable. In view of what is stated above, we do not find any substance in the objections either to the moratorium or amalgamation of the Petitioner bank with the Federal Bank on the ground of actual mala fides. A sufficient material has been placed before us to explain as to why moratorium became necessary. The Federal Bank has

responded promptly thereupon. However, that itself cannot vitiate the reasons to impose the moratorium and it cannot be said that the moratorium was imposed for favouring the Federal Bank. A sufficient explanation has also been given as to why the other proposals were not accepted. The amalgamation cannot be either said to be malafide or in breach of any statutory provisions or arrived at without considering all relevant factors or in breach of principles of natural justice.

33. We have noted the submissions of the counsel and it is quite clear that the action taken by RBI and the Central Government while declaring the moratorium as well as proceeding with amalgamation are taken with speed which is normally not seen in a governmental actions. The impugned actions therefore naturally led to suspicion about the intentions of the Respondents. However, suspicion cannot take the place of truth. As held by the Apex Court way back in para 92 of **E.P. Royappa v. State of Tamilnadu - AIR 1974 SC 555**:

> "The burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made then proved, and the very seriousness of such allegations demands proof of a high order of credibility."

Again, as observed in **Gulam Mustafa v. State of Maharashtra - AIR 1977 SC 448**:

> "Striking down any act for mala fide exercise of power is a judicial reserve power exercised lethally, but rarely. The charge of mala fides against public bodies and authorities is more easily made than made out."

34. Mr.Seervai for the Petitioners had referred to a few English and Indian cases on the question of exercise of discretionary powers and legal mala fides. He had relied upon Wednesbury Principles laid down by **Lord Green M R in Associated Picture Houses v. Wednesbury Corporation - 1948 (1) KB 223**. He had relied upon the judgment of the Apex Court in **Pratap Singh v. State of Punjab - AIR 1964 SC 72** on the doctrine of legal malafide and as to how mere denial of malafides cannot preclude the court from inquiring into the truth of allegation (para 9 of the judgment). He relied upon the judgment of **Lord Denning M R in Patfield v. Minister of Agriculture - 1968 Appeal Cases 997** and the observations at page 1007 of the repot to the following effect:-

> If it appears to the court that the minister

> has been or must have been influenced by extraneous considerations which ought not to have influenced him or conversely has failed or must have failed to take into account considerations which ought not to have been influenced him, the court has power to interfere."

Last but not the least, he emphasised the dicta of the Apex Court in para 81 of **Tata Cellular v. Union of India - (1994) 6 SCC 651** to the following effect:-

> "It is open to the court to review the decision maker's evaluation of the facts. The court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision made. If the weight of facts pointing to one course of action is overwhelming than a decision either way cannot be affected."

There is no quarrel with any of these propositions which are accepted propositions of law. In the facts of the present case, however, we are not impressed to accept the submissions either of factual malafide or of legal malafide.

35. The second petition has been filed by an employee of Ganesh Bank. His grievance is that the service conditions will change. When we peruse the scheme, we find that the service conditions will remain as they are for a period of 3 years. Mr.Salve explained that all necessary precautions for protecting the interest of the employees would be taken in view of the expectations of the Apex Court expressed in **K.I. Shephard v. Union of India - (1987) 4 SCC 431**. There are some 250 employees of Ganesh Bank and though this is a petition by an individual employee, it is not filed in a representative capacity. On the other hand, the RBI had received letters from the employees supporting the amalgamation. Mr.Sawant raised two other points concerning day to day work. First is that the head office of Federal Bank is far away in Kerala and the employees will be required to go over there, may be occasionally. Surely, such an occasion will not arise for each and every employee and the Federal Bank will make provision for conveyance etc. in any such eventuality as per its rules. Mr.Sawant also expressed apprehension with respect to transfer to far off places. We are sure that the same will be avoided by the Federal Bank to the extent possible since it would like to have smooth relations with the employees. In fact, it should consider treating the registered office of Ganesh Bank as its regional office in the particular

area wherefrom it may monitor functioning of the branches of the Petitioner bank. Mr.Sawant lastly submitted that most of these rural branches are conducting their affairs through the local language, i.e. in Marathi. The employees will find it difficult if there is any switch over. We expect the Federal Bank to take care of their apprehension and to continue the present practice which is in the benefit of the rural customers. It is a matter to be worked out with due cooperation of all concerned.

36. Since the first petition is filed by the bank, it is more concerned with the interest of the shareholders. Their interest has been taken care of in Chapter IV of the proposed scheme which provides for rights and liabilities of the members of the transferor bank. It is no doubt true that there is a deferment of the amounts due to them for a considerable time on their shares, but in the scheme of the things it cannot be helped. The Petitioner bank knew for the last over 3 years that it was in difficulty and nothing prevented it from taking steps for merger on its own terms with a bank of its choice by following the provisions of the Companies Act. The report of the RBI shows that the directors of the bank are most reluctant to consider any such proposal. Now that all these things have come to a head, and when reconstruction is not feasible, RBI

is applying the scheme which is uniform for all such situations. In fact, Mr.Salve preferred to it almost as a matter of policy wherein the scope of judicial review is very limited and particularly in economic decisions as held in **BALCO Employees Union v. Union of India - (2002) 2 SCC 333**. The scheme having been uniformly applied, the shareholders cannot make a grievance.

37. We may note the submissions of Mr.Virag Tulzapurkar, Senior Advocate who appeared for the Federal Bank and denied the allegations that it had influenced the decision of RBI in any manner whatsoever. He also explained the circumstances in which the Federal Bank had given its offer. He submitted that the Federal Bank was a strong bank and was interested in functioning in this area of the country and therefore it had given the proposal. He adopted and supported the submissions of Mr.Salve and Mr.Desai.

38. On the weight of the facts also, we do not think that the decision of the Respondents will be disturbed. We are conscious of the dicta in **Anisminic Ltd. v. Foreign Compensation Commission - 1969 (1) All E.R. 208** that if the decision making body goes outside its powers or misconstrues the extent of its

powers then too the courts can interfere. We are however unable to arrive at any such conclusion in the present case.

39. In the circumstances, we answer both the points framed for determination in the negative. The challenge to the impugned orders cannot therefore survive.

40. Both the petitions are therefore dismissed. There will not be any order as to costs.

41. The interim order passed earlier and operating during the pendency of these petitions will consequently stand vacated.

(H.L. GOKHALE, J.)

(A.S. OKA, J.)

41. After the judgment was pronounced, Mr.Seervai, learned counsel for the Petitioners in the first petition and Mr.Sawant, learned counsel for the Petitioners in the second petition, apply for continuation of the interim order at least for a period of 4 weeks. Mr.Desai, learned Additional Solicitor

General, Mr.Virendra Tulzapurkar for the RBI and Mr.Virag Tulzapurkar for the Federal Bank oppose the request. However, considering the fact that the interim order was running through this period of 3 months, we extend it for a further period of 4 weeks with a view not to deny an opportunity to the Petitioners. Accordingly, the moratorium will stand extended and the two directors of the RBI will continue to function on the Board of Directors of Ganesh Bank and the amalgamation will not come into force.

(H.L. GOKHALE, J.)

(A.S. OKA, J.)